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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,490	10/19/2001	Yumiko Seki	16869S-037000US	7401

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EXAMINER

NANO, SARGON N

ART UNIT PAPER NUMBER

2157

DATE MAILED: 01/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/055,490

**Applicant(s)**

SEKI ET AL.

**Examiner**

Sargon N Nano

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 - 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 - 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1-19-01</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is responsive to the application filed on Oct. 19, 2001. Claims 1 – 10 are pending examination.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 recites the limitation "the log information" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claims 1, 8 and 10 recite the limitation "said collected log" in line 11, 20 and 14 respectively. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1 – 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Jindal et al U.S. Patent No. 6,092,178 (referred to hereafter as Jindal).

Jindal teaches network naming service, such as Domain Name Service, where a policy is selected for choosing a preferred server from a plurality of servers according to specified operational characteristics (see abstract).

As to claim 1, Jindal teaches a managing program of determining promotion of a service in a system having a plurality of computers, each of said computers serving to execute the service, comprising:

a plurality of promotion rules for defining promotion of said service (see col. 3 lines 27 – 37, Jindal discloses rules or policy based on least loaded instances and /or fastest connection);

a plurality of conditions for executing said promotion rules, respectively ( see col. 3, lines 13 – 19, Jindal discloses a set of conditions for load balancing enhancement such as operational characteristics); and

wherein if the log information generated by executing said service is collected from each of said computers and said collected log information meets said condition, an instruction for controlling said computer is outputted on the basis of the promotion rule associated with said condition ( see col.3, line 13 – 26 , Jindal discloses that various information is collected concerning the status and operational characteristics of the instances and /or servers).

As to claim 2, Jindal teaches a managing program as claimed in claim 1, wherein said promotion rule is a rule for distributing a request for the service into said computers, said condition is an operating ratio of each of said computers, and an instruction is outputted for deriving the operating ratio of said computer from said log information collected from each of said computers and executing the promotion rule in which said operating ratio meets said condition (see col. 8, lines 31 - 43, Jindal

discloses gathering information from many servers to determine which server has the fastest response time for execution).

As to claim 3, Jindal teaches a managing program as claimed in claim 2, comprising the steps of displaying the promotion rule in which said derived operating ratio meets said condition; asking if said promotion rule is to be executed; and in the case of giving an input of executing said promotion rule, outputting an instruction for executing said promotion rule (see col.8, lines 33 – 46, Jindal discloses choosing the least loaded server which has the fast time, collecting relevant information for execution).

As to claim 4, Jindal teaches a managing program of determining promotion of a program to be executed by a computer having a plurality of programs, comprising: a plurality of program promotion rules for defining promotion of said program (see col. 3 lines 27 – 37, Jindal discloses rules or policy based on least loaded instances and /or fastest connection);

a plurality of conditions for executing said program promotion rule associated with said program promotion rule( see col. 3, lines 13 – 19, Jindal discloses a set of conditions for load balancing enhancement such as operational characteristics); and

wherein if the log information of the program to be executed and the collected log information meets said condition, said program promotion rule associated with said condition is to be executed by said computer ( see col.3, line 13 – 26 , Jindal discloses that various information is collected concerning the status and operational characteristics of the instances and /or servers).

As to claim 5, Jindal teaches a managing program as claimed in claim 4, comprising the steps of:

displaying an executing state of said program executed by said computer from said collected log information; displaying an inquiry as to whether or not the program promotion rule corresponding with the condition met by said collected log information is to be executed; and if an input is given of executing said program promotion rule in response to said inquiry, enabling said computer to execute said program promotion rule ( see col.8 , lines 33 – 46 , Jindal discloses choosing the least loaded server which has the fast time, collecting relevant information for execution).

As to claim 6, Jindal teaches a promotion managing program as claimed in claim 5, wherein the executing state of said displayed program represents on each of said programs a start time and an end time included in said collected log information (see col. 8, lines 34 - 46, Jindal discloses the fastest response time of an application instance).

As to claim 7, Jindal teaches a promotion managing program as claimed in claim 4, wherein the promotion rule of said program defines the executed program and the next program to be executed (see col. 10 lines 24 – 44, Jindal discloses updating file of all for all applications being load balanced).

As to claim 8, Jindal teaches a method of managing a plurality of computers in a system having said computers each of which provides a service, comprising:  
in at least one of said computers a plurality of promotion rules for defining promotion of said service and a plurality of conditions for executing said promotion rule on each of

said promotion rules (see col. 3 lines 27 – 37, Jindal discloses rules or policy based on least loaded instances and /or fastest connection); and

if the log information generated by executing the service is collected from each of said computers and said collected log information meets said condition, outputting an instruction for executing the promotion rule associated with said condition ( see col.3, line 13 – 26 , Jindal discloses that various information is collected concerning the status and operational characteristics of the instances and /or servers).

As to claim 9, Jindal teaches a control method of controlling promotion of a plurality of programs to be executed by a computer having said programs, comprising:

a plurality of program promotion rules for defining promotion of said programs(see col. 3 lines 27 – 37, Jindal discloses rules or policy based on least loaded instances and /or fastest connection);

a plurality of conditions for executing said program promotion rules, respectively ( see col. 3, lines 13 – 19, Jindal discloses a set of conditions for load balancing enhancement such as operational characteristics); and

wherein if the log information of the executed program is collected and said collected log information meets the condition, the program promotion rule associated with said condition is executed by said computer ( see col.3, line 13 – 26 , Jindal discloses that various information is collected concerning the status and operational characteristics of the instances and /or servers).

As to claim 10, Jindal teaches a system connected with a plurality of computers each of which provides a service, comprising: in at least one of said computers a

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plurality of promotion rules for defining promotion of said service and a plurality of conditions for executing each of said promotion rules (see col. 3 lines 27 – 37, Jindal discloses rules or policy based on least loaded instances and /or fastest connection); and

wherein if the log information of said executed program is collected and said collected log information meets the condition, the promotion rule associated with said condition is executed ( see col.3, line 13 – 26 , Jindal discloses that various information is collected concerning the status and operational characteristics of the instances and /or servers).

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Multi- Service Network Switch With Modem Pool Management By Ghahremani et al. U.S. Patent No. 6,717,913.
- Method And Apparatus For Defining And Implementing High – Level Quality Of Service Policies In Computer Networks By Silvano Gai U.S. Patent No. 6,167,445.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sargon N Nano whose telephone number is (571) 272-4007. The examiner can normally be reached on 8 hour.




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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Jan. 1, 05

  
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